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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &

HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.301/2001

APPELLANT Babai Mandal, aged about 23 yrs., S/o Shri Suphal Mandal, R/o Bindavanpur, P.S. Ulbedia, District of Howrah (W.B.) Currently residing at: Deepak Nagar; Bhubneshwars House, P.S. Mohannagar, Durg (C.G.)

Vs

RESPONDENT State of Chhattisgarh.

Present:
Mr. Shravan Agarwal, Advocate for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent-State.

O R A L J U D G M E N T

(9th July, 2007)

Per L.C. Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentence dated 24th February, 2001 passed by learned 4th Additional Sessions Judge, Durg in S.T. No.16/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty

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for commission of offence under Section 302 of the IPC for committing murder of Krishnu @ Krishna, sentenced him to undergo rigorous imprisonment for life.

Case of the prosecution, in brief, is that Krishnu @ Krishna (since deceased) was resident of Village Vindavanpur, District Howrah. He along with Raju @ Hafijul (PW-3), Sheikh Mehraj (PW-4), Sheikh Iliyas (PW-5) Mahabul (PW-8) and accused/appellant were residing in rented premises of Kishora Bai (PW-2) and they were doing embroidery work. On the fateful day i.e. 26.9.99 at about 7-7.30 p.m. accused Babai Mandal & Krishnu @ Krishna (since deceased) were watching television in the house of Kishora Bai (PW-2), thereafter accused/appellant along with Krishnu @ Krishna came outside the room and left the place on a bicycle. Thereafter, the deceased did not return in the night and next day morning the persons who were working with the deceased started searching him and at about 12.40 p.m. Sheikh Hafijul (PW-3) lodged a missing report in the Police Station Mohan Nagar, which was registered at Sr. No.45/99. On 27.9.1999 at about 10.00 a.m. somebody informed in the Police Station Bhilai Nagar over telephone that in front of Bungalow No.13 of 32 Bungalow across the Nehar drain a body of unknown person is lying and there is a coconut rope around his neck.

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Above information was recorded in Roznamchasanha No.2110 and enquiry was handed over to the Assistant Sub Inspector Shri R.B. Tiwari (PW-7), who reached on the spot, called the photographer and photos of body were taken. He saw that there was a rope around the neck, there were injuries on the neck & stomach inflicted by a sharp edged weapon, there was bleeding and knife was lying on the stomach. Some hairs were also in the fist of the deceased, two pairs of slippers (चप्पल) and one black colour button were lying there, there were Rs.120/- in the wallet of deceased on which name of deceased Krishnu @ Krishna was there. One visiting card of Vinod Kumar was also in the wallet. Shri R.B. Tiwari after giving notice (Ex.P-6) to Panchas prepared inquest (Ex.P-7) on the body of Krishnu @ Krishna. Body was sent for postmortem examination to the Government Hospital, Durg under Ex.P-8 where Dr. V.K. Sao (PW-10) conducted postmortem, prepared the report Ex.P-8A and opined that cause of death is asphyxia due to strangulation, shock & haemorrhage on account of multiple ante mortem injuries.

Knife, hairs, which were in the fist of deceased, one black colour button, one wallet & two pairs of slippers (चप्पल) were seized under Ex.P-10. Clothes of accused & deceased were seized under Ex.P-13 Ex.P-14 respectively. Accused while in police custody gave memorandum

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Ex.P-15 regarding the place where he kept the bicycle and in pursuance of that bicycle was seized under Ex.P-16. Sample of hairs of the head of accused were taken into possession under Ex.P-17. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur under Ex.P-18 from where report Ex.P-19. Report of hair examination is Ex.P-21.

After completion of usual investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class, Durg, who in turn committed the case to learned Sessions Judge, Durg from where learned 4th Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined 16 witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution case and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. Shravan Agarawal, Advocate for the appellant and Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent/State.

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As far as the question of homicidal death of Krishnu @ Krishna is concerned, the same has not been disputed by learned counsel for the appellant. Moreover, as per evidence of Dr. V.K. Sao (PW-10), who conducted the postmortem on the body of Krishnu @ Krishna has stated that cause of death was strangulation & shock as a result of haemorrhage and his report is Ex.P-8A, it is established that death of Krishnu @ Krishna was homicidal.

As far as involvement of the accused/appellant in the crime in question is concerned, in this case there is no direct or ocular evidence connecting the accused/appellant with the crime in question. Whole case rests upon the circumstantial evidence. The prosecution has tried to establish the charge against the accused/appellant based on the following circumstances;

1. That, the deceased was last seen alive with the accused before his death.
2. That, the button of accused/appellant's shirt was found near the body of deceased.
3. That, the slippers of accused was found near the body of deceased.
4. That, the bicycle was recovered from the house of accused/appellant at his instance.

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5. That, the injuries were found on the body of accused/appellant.
6. That, the accused/appellant dissuaded Sheikh Hafijul (PW-3) not to lodge report in the police station.

1st Circumstance;

In order to establish this circumstance that the deceased was last seen alive with the accused, the prosecution has examined Kishora Bai (PW-2) landlady of accused and deceased. This witness has stated that the deceased, accused and other persons namely Raju @ Hafijul, Sheikh Mehraj, Sheikh Iliyas & Mahabul were residing in her house as tenant and they were engaged in the embroidery work. About four months back in the evening she was watching television in her house along with her husband. At that time accused & deceased were also watching television. At about 6.00 p.m. in the evening accused and deceased left the house and as to where they went she does not know. Next day she heard that Krishna went to watch the movie and there somebody has committed his murder. She does not know with whom Krishna went to watch movie. There is no other evidence to show that the accused and deceased went together to watch the movie. Moreover, the prosecution has not been able to adduce any evidence to establish that the deceased and accused both had gone together to watch the movie and somebody saw them going on the bicycle. Evidence of Kishora

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Bai (PW-2) is to the effect that accused and deceased left together and where they had gone there is no evidence of this witness to that effect. Therefore, there is no evidence to the effect that the accused and deceased were last seen nearby the place where the body of deceased was found or somebody saw them going on bicycle or in the cinema hall. As such, the prosecution has failed to establish the fact that the deceased was last seen alive with the accused just before his death.

2nd circumstance:

So far as the recovery of button of the accused/appellant's shirt from the place where body of deceased was laying is concerned, no evidence has been adduced before the Court to the effect that the button was missing from the shirt of the accused/appellant. That, the button, which was seized from the place where body of deceased was found and the buttons of shirt of accused/appellant were matching. Even during cross-examination Shri K.L. Tandon (PW-11), Investigating Officer, has categorically stated that the button, which was found at the place of occurrence and the button of the shirt of the accused were not compared by him. PW-7 Shri R.B. Tiwari, who seized the button from the place of occurrence, has also stated that there was

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difference in the description of the button recorded in the seizure memo and actual button which was produced before the Court.

In view of the above, the prosecution has not been able to establish that the button which was seized from the place of occurrence tallied with the button of the shirt of the accused, which was taken into possession. Therefore, based on this circumstance the prosecution has not been able to connect the accused/appellant with the crime in question.

3rd circumstance;

So far as the recovery of the slippers (चप्पल) of the accused/appellant from the place of occurrence is concerned, Sheikh Iliyas (PW-5) has stated in the cross examination that slippers (चप्पल) of the deceased and the accused were shown in the police station. Mahabul (PW-8) has also stated that slippers (चप्पल) were shown to him in the police station. Both these witnesses were residing with the deceased and there is no reason for them to give evidence against the prosecution without any reason. Moreover, there is no cogent evidence to the effect that the slippers (चप्पल) which were recovered from the place of occurrence were of the accused and the deceased. Proper identification regarding slippers (चप्पल) has not been established.

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Therefore, based on this circumstance also the prosecution has not been able to connect the accused with the crime in question.

4th circumstance;

So far as the recovery of bicycle is concerned, as per FSL report no blood stain was found on the bicycle in question. Moreover, bicycle belongs to the accused/appellant, the same was recovered from the house of accused/appellant at his instance and nobody has stated that on the fateful day they saw the deceased going along with the accused on that bicycle and there is no such circumstantial evidence that the bicycle in question was used in carrying the deceased. Therefore, this circumstance also does not connect the accused/appellant in crime in question.

5th circumstance;

So far as the injuries found on the body of accused is concerned, Dr. V.K. Sao (PW-10) has stated that on 27.9.1999 he examined the injuries of accused also, there was an abrasion in the size of 1" x 1/8" on maxillary praminal in 'U' shape; one abrasion on the cheek and scab was present on the abrasion. Injuries were ante mortem in nature and his report is Ex.P-11. Moreover, PW-3 Sheikh Hafijul in Para 2 of his evidence has stated that at about 9-.30-9.45 p.m. when he returned to

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house after watching movie, Mahabul told him that the he has met with an accident and when he asked as to where accident happened, then he said that accident took place at Raipur Naka. Mahabul (PW-8) has also stated that he enquired from the accused as to why he was washing his face, then he replied that he met with an accident and that is why he is washing his face.

Based only on this circumstance, as there is no other circumstantial evidence to connect the accused in the crime in question, it is difficult to connect the accused with the crime in question unless there is other circumstantial evidence regarding involvement of the accused/appellant in the crime in question. Moreover, the accused/appellant on enquiry by these two persons stated that he sustained abrasion injuries on account of accident and the prosecution has not tried to adduce any evidence to establish that the accused in fact did not met with any accident and that was a false explanation.

6th circumstance:

So far as the accused/appellant dissuading Sheikh Hafijul (PW-3) not to lodge the missing report in the police station regarding Krishna is concerned, this fact does not find place in the police diary statement of this witness, therefore, this appears to be an

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improvement in the court evidence, as such, no reliance can be placed on this evidence.

For the foregoing reasons, there is no legal, clinching evidence to connect the accused with crime in question, as such, the conviction of accused/appellant Babai Mandal under Section 302 of the IPC and sentence imposed under that section cannot be sustained.

In the result, the appeal filed by the appellant succeeds and the same is allowed. Conviction of appellant Babai Mandal under Section 302 of the IPC and sentence imposed under that section are hereby set aside. He is acquitted of that charge. It is stated that the appellant is in detention since 29.9.1999, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge

Sd/-
L.C.BHADOO
Judge

Roshan/-

P.T.O.